In the High Court of Uttaranchal at Nainital.

Criminal Appeal No. 324/2001
(Old No. 2595/1985)

Madan Mohan Joshi S/o Late Shri Narain Dutt Joshi
R/o village Madanpur Golapur
P.S. Haldwani District Nainital .....Appellant.

Vs.

State of U.P. .....Respondent.

Sri R.S. Sammal learned counsel for the appellant.
Sri Lalit Verma learned A.G.A. for the respondent.
Date of judgment: 1-04-2004.

ORAL JUDGMENT **(Per: Hon'ble Irshad Hussain, J.)**

This criminal appeal has been filed against the judgment and order dated 19-9-1985 passed by the then Special Judge Nainital, in Sessions Trial No. 49/1984, convicting and sentencing the appellant to undergo R.I. for six months under section 323 I.P.C.

The prosecution case against the appellant was that on 29-4-1983 at about 9.30 a.m. in village Kishanpur, within the circle of P.S. Haldwani, District Nainital appellant assaulted Rajendra Singh aged about 15 years while he was a student and had come out along with others during the school interval period. The appellant threw said victim in the minor canal having depth of 2 or 3 feet. The cause for the assault was that the victim had hit a she-buffalo and drove it away in the presence of the appellant, who did not like the mischief made by the said victim. On hearing about the incident complainant Gopal Singh brought the victim to the clinic of Dr. Tiwari where the said victim was declared dead.

Gopal Singh prepared a written report, Ex.Ka-1 and lodged it at P.S. Haldwani the same day at 11.35 a.m. and a case under section 304 I.P.C. was registered against the appellant. The dead body of the deceased Rajendra Singh was sent for post mortem after the inquest. On completion of the investigation charge sheet was submitted against the

appellant and thereafter he was committee to the court of Sessions to stand trial.

The appellant was charged under section 302 I.P.C. He pleaded not guilty.

Prosecution examined two eye witnesses Prahlad Singh (P.W.1) and Pradeep Singh (P.W.3). Both of whom were also the college boys and have come out with the deceased during school interval period and at that time the occurrence took place in which the deceased on being assaulted died as a result of the injuries sustained.

Learned counsel for appellant submitted that the learned Sessions Judge has not properly appraised the evidence of these two eye witnesses and thereby arrived at an incorrect inference that the occurrence had been seen by these two witnesses and that the appellant had assaulted the victim. Having gone through the evidence of both these witnesses with the help of the learned A.G.A. I see no force in the argument of the learned counsel for the appellant. The reason is that both the eye witnesses have corroborated the prosecution story as disclosed in the written report, Ex.Ka. 1 which had also been proved by its author Gopal Singh (P.W.3). There was sufficient evidence to prove beyond doubt that the victim Rajendra Singh was assaulted at the time of occurrence by the appellant.

Learned Sessions Judge had considered the medical evidence which to the effect that the injuries sustained by the victim were minor but the cause of death was due to rupture of enlarged abnormal spleen. The Medical Officer Dr. M.S. Jaspal (P.W.4), who conducted the post mortem on the dead body of the deceased had been categorical that the spleen was found enlarged and was abnormal size and weight. He had not found any mark of injury on the rib of the deceased. According to Medical Officer the abnormal enlarged spleen could be ruptured due to sneezing, coughing or vomiting. Considering this medical evidence the learned Sessions Judge found favour with the argument of the defence that the appellant did not assault the victim with intention to cause his death or such injury which was likely to cause the death and further that the act of the appellant was not such as in ordinary course could have resulted into the death of the victim Rajendra Singh. The learned

Sessions Judge also accepted the argument that it was a mere chance that the deceased had abnormal enlarged spleen and he died by ordinary beating and that in the absence of any external mark of injury on the body of the deceased it was established that the appellant voluntarily caused simple hurt and the act of the appellant only amount to commission of an offence under section 323 I.P.C. and not under section 302 I.P.C. for which he had been charged. The reasonings given by the learned Sessions Judge are based on proper appraisal of the medical evidence on record and the attending circumstances of the case and therefore there is no illegality in the inference drawn and conviction recorded under section 323 I.P.C. against the appellant.

Learned counsel for the appellant submitted that the occurrence took place in the year 1983 and the appellant had been under detention before grant of bail for quite some time and that in the totality of the circumstances of the case the sentence for a period of six months R.I. awarded by the learned Sessions Judge need to be modified and reduced to the period already undergone and in addition thereto the appellant may also be sentenced to pay reasonable fine. Having considered the facts and circumstances of the case the submission of the learned counsel carry conviction and in the interest of justice the sentence awarded to the appellant may be modified accordingly.

The appeal is partly allowed. The conviction of the appellant under section 323 I.P.C. is upheld. The sentence of six months R.I. awarded is modified and reduced to the period of sentence already undergone and to pay a fine of Rs. 1000-00 (one thousand). In default of payment of fine the appellant shall undergo R.I. for 3 (three) months.

Let the record be sent back to the court concerned for compliance. The compliance report be submitted to the court within one month.

(Irshad Hussain, J.)

ISB